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Paper 28
Filed: February 9, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Merck Patent Gmbh,
Junior Party
(Application 10/239,566,
Inventors: Friedrich **Rippmann** and Klaus Ducker),
v.
Lexicon Genetics Inc.,
Senior Party
(Patent 7,229,790
Inventors: Carl Johan **Friddle** and Brenda Gerhardt, and Yi Hu).

Patent Interference 105,594 (RES)
Technolgy Center 1600

Before: RICHARD E. SCHAFER, JAMESON LEE, and
MICHAEL P. TIERNEY, Administrative Patent Judges.

SCHAFER, Administrative Patent Judge

Judgment - Request for Adverse - Bd.R. 127(b)

- 1 Merck has filed a notice of abandonment of the contest (Paper 27).
- 2 An abandonment of the contest is construed as a request for adverse
- 3 judgment. 37 CFR § 41.127(b)(4). Accordingly, it is

1 **ORDERED** that judgment on priority as to the subject matter of
2 Count 1 (Paper 1, p. 4) is awarded against Merck;
3 **FURTHER ORDERED** that Claims 1-9 and 11 of Merck
4 Application 10/239,566 (corresponding to Count 1) are finally refused (35
5 U.S.C. § 135(a));
6 **FURTHER ORDERED** that a copy of this judgment be made of
7 record in the files of Application 10/239,566, and Patent 7,229,790; and
8 **FURTHER ORDERED** that if there is any settlement agreement or
9 related documents which have not been filed, attention is directed to
10 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/ <u>Richard E. Schafer/</u>)	
RICHARD E. SCHAFER)	
Administrative Patent Judge)	
)	
)	
/ <u>Jameson Lee /</u>)	BOARD OF PATENT
JAMESON LEE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
/ <u>Michael P. Tierney/</u>)	
MICHAEL P. TIERNEY)	
Administrative Patent Judge)	

cc (electronic filing):

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